To the ENOUREME published twice a week, generally, and three times a week during the session of the State Legislature.—Price, the same as heretofore, Five Deliarrapet aunum, payable in advance. Notes of Chartered specie paying Banks, (only) will be received in payment. The Editor will guarantee the safety of remitting them by mail, the postage of all letters being paid by the writers.

27 No paper will be discontinued, [but at the discretion of the Editor, juntil all arrearages have been paid up. 17 Whovely will guarantee the payment of nine papers that provide a tenth grafts.

poid for, or assumed by some person in this city or its entirems.

New LOTTERY SCHEME.—The subscriber being authorized by the Board of Directors of the Literry Fund to raise by Lottery \$30,000 for the foundation of an Academy in the county of Montgomery, hereby gives notice that he proposes to raise the said money by means of his lottery of seven numbers; and that the first drawing of the rame will take place in the city of Richmond'on the 3d day of April next, and that the drawing will be monthly thereafter till the said sum of money shall be raised. The drawing of this lottery will be executed in five minutes; in which time will be decided the fate of the following prizes, viz:

3. Prizes of \$5000

1848 Prizes of \$5000

2412 Prizes of \$5000

There is to this achieve not three blanks to a prize; and the prizes will be paid without discount thirty day after each drawing. A discount of near 17 per cent, on the amount of tickets sold is mrade to defay the expences of the lottery, and to found the Academy. The simplicity and entire fairness of this plan of drawing lotteries will, the subscriber trusts, claim for it the patrosage of the public, especially when the landable object, the promotion of education, is considered. The subscriber pladges himself that the scheme which he now offers is essentially different from the lottery of numbers attempted in Richmond some time since.

Tickets at \$4 each are now for sale in this city, and in all the prize paid as above. Printed explanations of this lottery can be had graits at all itselectory offices.

JOSEPH VANNIMI, Sole Manager.

Feb. 23

800 acres of Land for sale.

Feb. 23

Storm Feb. 24

In the county of Goodshand, within 4 or 5 miles of I James liver, and about 36 from Richmond, on Lickinghole covers, which commains from 40 to 30 acres low-grounds, bravily londed with Amber, and sunable for like collars of tongeco, corn, and small grain, and lines well—it contains a considerable portion of hist rate tonge, of land is well grangled to planter, and sunable for like collars of tongeco, corn, and small grain, and lines well—it contains a considerable portion of hist rate tonge, of land to cut; also goine excellent manured tots. A considerable portion of the cleared had has not been grained for several years, upry passined; and being raclosed, renders it in a good situation for prepare for wheator other grain. The wood land is sufficiently loaded with timber to sapport the place—On which is a good dwelling house, with a cellar the whole size, attably divided, with necessary are places, and all necessary on houses, barns, stables, &c.; a threshing machine gam and never falting aprings. It is thought said place would be an excellent stand for a public house, as it touches the main road—It also has on it an apple orchard of well selected, choice fruit, which is thought to be the most productive and best orchard in the county, heades other good fruit trees; a distillery for three stills, and two good ones in it, with good poster worms, the house built of stane, with a liquor store attached makes it a complete distillery. Also will Lt., the wait of which is of stone, and contains a pair of Cologue and Butr stones, which is said by all the neighbors to be sufficient to support the place by toll. Every person acquainted, anows that Goochland is peculiarly adapted to healthy situations.

The ambarchier will treat with a put caseer; and Mr. Bunnah Anderson, of Richmond, is fully autharized to healthy situations.

The subscriber will treat with a put caseer; and Mr. Bunnah and the behalace in an mal hisralments as may be agre

P. S. Said land can be related the present year...
The lans not tended is not to be pastured.

C. Y.
Feb. 13.

WAS committed to the jail of Reglatorings county on
the 15th of Descenber last, a negro man who calls
himself JAMES BALLARD; says he is free, and was
raised in Balmonre county. Maryland; dist he sorted
from thence with a captain Jack for York and litch
mond; said legro is a very stont, round-shouldered,
foll-faced fellow; 5 feet 81 inches high; he has a fine
set of teeth; there is a more than common vasancy he
tween his apper front teeth, but there is no tooch what
ing. When committed, he had on a surfout coater
fomessum, black and white tuiled kersey, white negro
cotton overalls, and black silk vest, much worn; one
pair of dran cossinct panuloons; the remains of an
old fine brown coat. He is an expressible fellow in his
address, and uses the words "my ocar master," free
quently. He had also when committed a large lore
man's pinol, with nowder, backshot, &c.—The owner
will pleas apply for him, or he will he dealt with a sthe
law directs.

for John Leyburn, Sheriff of it C.

Lexington Harca 4.

Lexington Alarca 4.

Lexington Alarca 4.

Estington March 4.

If IDE5, COFFRE, Ac. - 500 prime: Buenos Ajres
If Imes; 6,000 ibs. Green Coffre; 16 hinds. Movado Sugar; 12 hins. best Loaf Sugar; 8 ponche
choire Automa Rom; 6 half opper and quarrer or
Loundon P. Madera Wins, old; 20 quarrer casks su
Malaca Wins, and

Malaga Wine; 49 tota Nova Scotta Piaster; Havana White Sagaf, it boxes; Lordon Porter; Stater's Strain Kitchen, etc. &c.—Receiving and in store, for tale by WM. SHEPHERD, D. Street, March 9. 102. 127. Opnosite Whitock's.

AND FOR SALE.—The whote order language David of Ross, dec. in the counties of Campiell & Finvanna, are now to the market.—The Campbell lands may be contracted for with Mr. John Lynch, J. of Lynchburg. Those in Flavanna (including a number of lots in the town of Columbia), with Mr. George Holman of that County.

Those is Flavania (Mensing a town of Columbia) with Mr. George Holman of that county.

A considerable proportion of the Campell lands, and all the Flavania lands, not before discosed of, will be sold at anction in the month of February next.—The terms of public sale will be one-tourth cash, the residue in three equal annual payments. The particular tracts to be sold publicly, with the days and places of sale, will be duly advertised.—The lands in Campbell comprise a very large body which has never been contracted, lying generally between seven and twelve miles from Lynchburg, and between half a mile and six unies from Lynchburg, and between half a mile and six unies from Lynchburg, and from its situation in the heart of an improving stuff dourishing country, while Gue or two bours ride of the thriving town of Lynchburg, would afford many agreeable summer retreats for families in the lower country.—There are also minary pieces of good wheat and to paced and, and an excellent stand for a tavern, near one of the best surings below the monitains.

THOMAS T. BOULDIN, export University 13-16.

tains.

Jan. 5.

To the Members of the Protestant Episcopal Church in Firginia.

In Spanish and the power vested in me, as Bishop, by the Constitution of the Church in this Diocess, to call a special convention of the Clerical & Lay Deputies at such time and place as to me may seem most expedding, I hereby give notice, that a special convention of the said deputies is appointed to be held in the town of the said deputies is appointed to be held in the town of the thirteenth day of Mos

RICHARD CHANNING MOORE, Bishop of the Protestant Education RICHARD CHANNING MODRE Bishop of the Protestam Episcopal Church of Virginia, Teste... WM. MONFORD Seety. For ARSIAL'S SALE.—By virtue of a decree of the superior court of chancery for the Richmond dist, made in a cause therein depending between Wm. Milliam Sayre, and others, defending is a sum of the superior court of chancery for the Richmond of Mm. Vice, dec. and others, defending is a sum of the superior court of the superior court of wars, and sum of William Sayre, and others, defending in the sold, as a order of the afternoon of vidas, afth of April mark, an the premises, the mainted LUT OF LAND, lying in the city of Richmond, and will be sold, and a large and a large blotel, will be sold, the of LAND, bying in the county of main, near the lyrings, containing sold areas, and admining the last of adam Dickenson, and others; or so much they as may be necessary to satisfy the deat, interest anym, in said occree mentioned, together with the

M. 9.

NGE.—All persons indecided to the estate of the FOHN LESSLIF, dec. are requested to wake image organisat; and all who have claims against the Assate are desired to present the same to the substrate, at the counting house of the late John Lesslie.

JAMES SCOTT Exter of John Leastle, dec.

M \$141/8 3.4.1.4. Pursuam to a decige of the Hamst, ploisonneed at the Jame resident, 1818, in the Cascock & other saminst from the said to the last indice, for reasy money, on the 5th days of

April 1, before the tavers of Ref. he cos of Glones, the cost of diones er, one tract of LAND, is the side coy, near the Olive Branch Meetinchouse, or training acres, more or less, with the houses and in prevents thereon. ROSERF LIVELY, b. M. for B. W. Pryor, M. W. C. D. C.

From the National Intelligencer. BANK OF THE U. STATES. In the Supreme Court of the United States.

McCulloh

vs.

The State of Maryland.

Writ of error from the Court of Appeals of Maryland.

The CHIEF JUSTICE delivered the

Opinion of the Court.
In the case now to be determined, the defendant, a sovereign state, denies the obligation of a law enacted by the legislature of the union, and the plaintiff on his part, contests the validity of an act which has been passed by the legislature of that cate. The constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the government of the union, and of its members, as marked in that constitution, are to be discussed; and an opinion g von, which may essentially influence the great operations of the government. No tribunal can appreach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. But it must be decided peac fully, or remain a source of hostile legislation, perhaps of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made. On the Supreme Court of the Unit of States has the constitution

The first question made in the cause is, HasCongress power to incorporate a bank? It has been truly said, that this can carcely be considered as an open question, entirely unprejudiced by the former proceedings of the nation respecting it. The principle now contested was intro-duced at a very early period of our listo-ry, has been recognized by many successive legislatures, and has been acted upon by the judicial department, in cases of peculiar delicacy, as a law of undoubted

of our country devolved this important

obligation. It will not be denied, that a bold and daring usurpation might be resisted, after an acquiescence still longer and more complete than this. But it is conceived that a doubtful question, one on which human reason may pause, and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but the respective powers of those who are equally the representatives of the people, to be adjusted, if not put at rest by the practice of the government, ought to receive a considerable impression from that practice. An exposition of the constitution, deliberate-ly established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly

by the first Congress elected under the present Constitution. The bill for incor-porating the Bank of the United States did not steal upon an unsuspecting legislature and pass unabserved. Its principle was completely understood, and was opposed with equal zeal and ability. After being resisted first in the fair and open field of debate, and afterwards in the executive cabinet with as much persevering talent as any measure has ever experienced, and being supported by arguments which convinced minds as pure and inteligent as any this country can boast, it became a law. The original act was perinduced the passage of the present law. The oath of fidelity to it. require no ordinary share of intrepidity to assert that a measure adopted und rth se circumstances was a bold and plain usurpation, to which the Constitution gave no countenance.

These observations belong to the cause; but they are not made under the impression that, were the question entirely new the law would be found irreconcileable with the Constitution.

In discussing this question, the counsel for the State of Maryland have doemed it of some importance in the constinction of the Constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent states. The powers of the general government, it has been said, are telegated by the states, who alone are truly sovereign, and must be exercised in subordination to the states, who alone

possess supreme dominion. It would be difficult to sustain this proposition. The Convention which framed the Constitution was indeed elected by e state legislatures. But the instrumere proposal, without obligation, or pretensions to it. It was reported to the en existing Congress of the U. States, with a request that it might " be submitted to a Convention of Delegates, chosen in each state by the people thereof, under recommendation of its Legislature, for their assent and ratification." mod of proceeding was adopted; and By the Convention, by Congress, and by the State Legislatures, the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively and wisely on such a subject, by assembling in Convention. It is true, they assembled in their several states-and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate states. and of compounding the American people into one common mass. Of consequence, when they act they act in their states -But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the state governments.

From these Conventions the Constituion derives its whole authority. The government proceeds directly from the peohe name of the people; and is declared to be ordained "in order to form a more perfect union, establish justice, ensure ers of government, we do not find the demestic franquility, and secure the word "bank" or "corporation," we find

in their sovereign capacity is implied in to declare and conduct a war, and to raise calling a Convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or and no inconsiderable portion of the inreject it; and their act was final. quired not the affirmance, and could not be negatived by the state governments.— The Constitution, when thus adopted, was of complete obligation, and bound

the state sovereignties.
It has been said, that the people had already surrendered all their powers to the state severeignties, and had nothing more to give. But surely the question whether they may resume and modify the powers granted to government does not remain to be settled in this country Much more might the legitmacy of the general government be doubted, had it been created by the states. The powers delegated to the state sovereignties were to be exercised by themselves, not by a distinct and independent sovereignty, created by themselves. To the formation of a league such as was the confederation, the state sovereignties were certainly competent. But when "inorder to form a more perfect union," it was deemed necessary to change this alliance into an effective government, possessing great and sovereign power and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was telt and acknowledged by all.

The government of the Union, then, whatever may be the influence of this fact on the case, is, emphatically and truly, a government of the people. form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.

This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to rise as long as our system

In discussing these questions, the conflicting powers of the general and state governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

If any one proposition could command the universal assent of mankind, we might expect it would be this-that the govern-The power now contested was exercised ment of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature It is the government of all; its powers are de-legated by all; it represents all, and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind on the single reason, that the creation o its component parts. But this question s not left to mere reason; the people nave, in express terms, decided it, by saying, it it is constitution, and the laws of the became a law. The original act was permitted to expire, bura short experience of the embarrassurents to which the refusal to revive it exposed the government, convinced those who were most prejudiced and the officers of the executive and juagainst the measure of its necessity, and dicial departments of the state, shall take

The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pur-suance of the constitution, form the supreme law of the land, " any thing in the constitution or laws of any state to the contrary notwithstanding.

Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and requires that every thing granted shall be expressly and minutely described. Even the 10th amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, amits the word "ex-pressly," and declares only that the powers " not delegated to the United States, nor prohibited to the states, are reserved to the states or to the people;" thus leaving the question, whether the particular power which may become the subject of contest has been delegated to the one government, or prohibited to the other, to tepend on a fair construction of the whole instrument. The men who drew and adopted this amendment had experienced the embarrassments resulting from the insertion of this word in the articles of confederation, and probably omitted it to a void those embarrassments. A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcelybe embraced by the human mind. It would probably never be understood by the public. Its nature, Therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingrefients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution, is not only to be inferred from he nature of the instrument, but from the language. Why else were some of the limitations found in the ninth section of the 1st article, introduced? It is also, in some degree, warranted by their having omitted to use any restrictive term which might prevent its receiving a fair and just interpretation. In considering this qu tion, then, we must never forget that it is a constitution we are expounding.

Although, among the enumerated pow-

and no inconsiderable portion of the industry of the nation, are entrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may with gefat season be contended, that, a government entrusted with such ample powers on the due execution of which the happiness and prosperity of the nation so vitally depend, must also be entrusted with ample means for their execution .. The power being given, it is the interest of the nation to facilitate its execution It can never be their interest, and cannot be presumed to have been their intention, to clog, and embarrass its execution by withholding the most appropriate means Throughout this vast republic, from the St. Croix to the Gulph of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be warched and supported. The exigencies of the nation may require that treasure raised in the north should b transported to the south, that raised in the east conveyed to the west, or that this order should be reversed. Is that construction of the constitution to be preferred which would render these operations difficult, bazardous, and expensive Can we adopt that construction, unless the words imperiously require it, which would impute to the framers of that instrument, when granting these powers tor the public good, the intention of im-peding their exercise by withholding at choice of means? If indeed, such be the mandate of the constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be exe-cuted, nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exereise of those powers. It is, then, the subject of fair enquiry, how far such means may be employed.

It is not denied, that the powers given to the government imply the ordinary means of execution. That for example, of raising revenue and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance. But it is denied that the government has its choice of means, or that it may employ the most convenient means, if, to employ them,

it be necessary to erect a corporation. On what foundation does this argu ment rest? On this alone: The power of creating a corporation is one appertaining to sovereignty, & is not expressly conferred on Congress. This is true. But all legislative powers appertain to sovereignty. The original power of giving the law on any subject whatever, is a sovereign pow er; and if the government of the Union is restrained from creating a corporation as a means for performing its functions, a corporation is an act of sovereignty if the sufficiency of this reason be ac knowledged, there would be som difficulty in sustaining the authority of Congress to pass other laws for the accom-plishment of the same objects.

The government which has a right to do an act, and has imposed on it the duty of performing that act, must according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of extablishing

The creation of a corporation, it is said, appertains to sovereignty. This is admitted. But to what portion of sovereignty does it appertain? Does it belong to one more than to another? In America, the powers of sovereignty are divided between the government of the Union and those of the states. They are each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects com mitted to the other. We cannot compre hend that train of reasoning which would maintain that the extent of power grant ed by the people is to be ascertained not by the nature and terms of the grant but by its date. Some state constitutions were formed before, some since that of the United States. We cannot believe that their relation to each other is in any degree dependent upon this circumstance. Their respective powers must, we think, be precisely the same as if they had been formed at the same time. Had they been formed at the same time, and had the people con ferred on the general government the powers contained in the constitution, and or the states the whole residuem of power, would it have been asserted that the government of the Union was not sovereign with respect to those objects which were entrusted to it, in relation to which its laws were declared to be su preme? If this could not have been asser ted, we cannot well comprehend the process of reasoning which maintains, that a power appertaining to sovereignty cannot be connected with that vast portion of it which is granted to the general government, so far as it is calculated to subserve the legitimate objects of that government. The power of creating a corporation, though appertaining to so vereignty, is not, like the power of making war, of levying taxes, or of regulating commerce, a great substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exer cised, but a means by which other objects are accomplished. No contributions are made to charity for the sake of an incorporation, but a corporation is created to administer the charity; no. seminary of

education. No city was ever built with | must have been the intention of those The sole object of being incorporated but is incorporated as affording the best means of being well governed. The power of creating a corporation is never used for its own sake, but for the purposof effecting something else. No sufficient reason is, therefore, perceived why it may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them.

But the constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the government, to general reasoning. its enumeration of powers is added that of making "all laws which shall be necessart and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or

in any department thereof."

The Counsel of the State of Maryland have orged various arguments, to prove, that this clause though in terms a gran of power, is not so in effect; but is, real iy, restrictive of the general right, which might otherwise be implied, of selecting means for executing the enumerated pow-

They have found it necessary to contend that this clause was inserted for the purpose of conferring on Congress the power of making laws. That, without it, doubts might be entertained, whether Congress could exercise its powers in

the form of legislation. But could this be the object for which twas inserted? A government is created by the people, having legislative, executive, and judicial powers. Its legislative powers are vested in a Congress, which is to consist of a Senate and House of Representatives. Each House may determine the rules of its proceedings; and it is declared that every bill which shall have passed both Houses, shall, before it become a law, be presented to the Pre sident of the United States. The 7th section describes the course of proceedings, by which a bill shall become a law and, then, the 8th section coumerates the powers of Congress. Could it be neces sary to say, that a legislature should exercise legislative powers, in the shape of legislation? After allowing each house to prescribe its own course of proceed ing, after describing the manner if which a bill should become a law, could it have entered into the mind of a single member of the convention, that an express power to make laws was necessary to enable the legislature to make them That a legislature, endowed with legislative powers, can legislate, is a proposi-tion too self evident to have been questi-

But the argument on which most reliance is placed, is drawn from the pecu-har language of this clause. Congress is not empowered by it to make all laws which may have relation to the powers conferred on the government, but such only as may be "necessary and proper" for carrying them into execution. The word "necessary" is considered as con-trolling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers, to such as are indispensable, and without which the power would be nugatory. That it is cludes the choice of means, and leaves to Congress, in each case, that only which is most direct and simple. Is it true, that this is the sense in which the word "necessary" is always used?

always import an absolute physical necessity, so strong, that one thing, to which another may be termed necessacannot exist without that other We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. Such is the character of human language, that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in their rigorous sense, would convey, a meaning different from that which is obviously intended. It is essential to just construction that many words which import something excessive, should be under stood in a more mitigated sense, in that sense which common usage justifies.... The word "necessary" is of this de scription. It has not a fixed character seculiar to itself. It admits of all de grees of comparison, and is often connected with other words which increase or diminish the impression the mind receives of the urgency it imports. thing may be necessary, very necessary absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrazes. This comment on the word is well illustrated by the passage cited at the bar from the 10th section of the 1st article of the constitution. It is, we think, impos sible to compare the sentence which prohibits a state from laying "imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws," with that which au thorises Congress "to make all laws which shall be necessary and proper for carrying into execution" the powers of the General Government, without feet ing a conviction that the convention understood itself to change materially the meaning of the word "necessary" by pre-fixing the word "absolutely." This word, then, like others, is used in various senses, and in its construction, the context, the intention of the person using them, are all to be taken into view.

Let this be done in the case under conblessings of liberty to themselves and to the great powers to lay and collect laxes, their posterity." The assent of the states to borrow money, to regulate commerce, is conferred to subserve the purposes of fare of a nation essentially depends. It

who gave the se powers, to ensure, as far as human prudence could ensure their beneficial execution. This could not be done by contiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time execute its powers, would have been to change entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if forescen at all, must have been seen dimly, and which can be best pro-vided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances. If we apply this principle of construction to any of the powers of the government, we shall find it so pernicious in its opera-tion that we shall be compelled to dis-card it. The powers vested in Congress may certainly be carried into execution, without prescribing an oath of office. The power to exact this security for the faithful performance of duty, is not given, nor is it indispensably necessary ... The different departments may be established, taxes may be imposed and collected, armies and navies may be raised and maintained, and tooney may be borrowed, without requiring an oath of office. It might be argued, with as much plausibility as other inciden-tal powers have been assailed, that the convention was not unminisful of this subject. The oath which might be exacted-that of fidelity to the constitution, is prescribed, and no other can be required. Yet, he would be charged with insanity who should contend, that the legislature might not superadd, to the oath directed by the constitution, such other oath of office as its wisdom might

So, with respect to the whole penal code of the United States; whence arises the power to punish in cases not pre-scribed by the constitution? All admit, that the government may, legitimately, punish any violation of its laws; and yel, this is not among the enumerated powers of Congress. The right to enforce the observance of law, by punishing its infraction, might be dented with the more plausibility, because it is expressly given

Congress is empowered, " to provide

for the punishment of counterfeiting the securities and current coin of the United States," and " to define and punish piracies and felonies committed on the high seas, and offences against the laws nations." The several powers of Congress may exist in a very imperfect state to be sure, but they may exist, and be carried into execution, although no punishment should be inflicted in cases where the right to punish is not expressly given. Take, for example, the power "to establish post offices and post roads." This power is executed by the single act of making the establishment But, from this has been inferred the power and duly of carrying the mail, along the post road, from one post office to another .-And, from this implied power, has again been inferred the right to punish those who steal letters from the post office, or rob the mail. It may be said, with some plausibility, that the right to carry the mail, and to punish those who rob it, is not indispensably necessary to the establishment of a post office and post road. This right is indeed essential to the beneficial exercise of the power, but not indispensably necessary to its exis-So, in the punishment of the crimes of stealing or falsilying a record or process of a court of the United States, or of perjury in such court. To pomsh these offences is certainly conducive to the due administration of justice. But courts may exist, and may decide the causes brought before them, though such

The baneful influence of this parrow construction on all the operations of the government, and the absolute impracticability of maintaining it without rendering the government incompetent to its great objects, might be illustrated by namerous examples drawn from the censulution and from our laws. The good sense of the public has pronounced, without hesitation, that the power of punishment appertains to soverereignty, and may be exercised whenever the sovereign has a right to act, as meidental to his constitutional powers. It is a means for carrying into execution all sovereign powers, and may be used, although not indispensably necessary. It is a right incidental to the power, and conducive to its beneficial

If this limited construction of the word "necessary" must be abandoned in order to punish, who ee is derived the rule which would reinstate it, when the goveroment would carry its powers into execution by means not vindictive in their nature? If the word "necessary" means " needful," " requisite," " esvential," "conducive to," in order to let in the power of punishment for the infraction of law, why is it not equally comprehensive when required to authorise the use of means which facilitate the execution of the powers of government without the infliction of punishment?

In ascertaining the sense in which the word " necessary" is used in this clause of the constitution, we may derive some aid from that with which it is associated Congress shall have power " to make all laws which shall be necessary and proper to carry into execution" the powers of the government. If the word "necessary" was used in that strict and rigorous